

Exhibit B

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DEPARTMENT, FIRST DISTRICT, COOK COUNTY

Portfolio Recovery Associates, LLC,
Plaintiff,

VS,

Alejandro Rodriguez,
a/k/a Alejandro Ferguson,

Defendant(s).

08 M1 109617

FILED-48
08 SEP 29 AM 11:36
CLERK
MUNICIPAL DEPARTMENT
CIRCUIT COURT OF COOK
COUNTY, ILLINOIS

**MOTION FOR LEAVE TO FILE MOTION TO DISMISS UNDER
735 ILCS 5/2-619.1 AND INCORPORATED MOTION TO DISMISS**

Defendant Alejandro Rodriguez hereby requests the Court permit him to file the incorporated motion to dismiss this case under 735 ILCS 5/2-619.1 for failure to state a claim upon which relief may be granted, and dismiss this case.

In support of this motion, defendant states:

1. This is a debt collection action. The plaintiff had debt buyer seeks to collect an alleged credit card debt originally owed to Provident National Bank.

735 ILCS 5/2-615 Motion

2. The complaint lacks fundamental information required by the Small Claims Rules such that justice requires that the Court permit defendant to file this motion to dismiss so that defendant may properly understand the claims against him and prepare for trial - provided that the case gets that far. The question of the sufficiency of the pleading is purely legal, and would likely dispose of the case completely if granted.

3. Illinois Supreme Court Rule 282 requires that, at a minimum, a small claim complaint include:

(1) plaintiff's name, residence address, and telephone number, (2) defendant's name and place of residence, or place of business or regular employment, and (3) the nature and amount of the plaintiff's claim, giving dates and other relevant information.

4. The complaint here, Exhibit 1, includes almost none of these required items.

5. Missing Dates. Most importantly, the complaint does not mention any dates at all, let alone the relevant dates relating to the alleged debt.

6. Inclusion of the relevant dates, such as the date of alleged default, as required by the rule would permit fair notice of the claim against defendant. Moreover, defendant has reason to believe that, even if the debt exists (which he does not concede), any cause of action for collection thereof accrued more than five years before plaintiff filed suit, February 6, 2008. "When a creditor may legally demand payment from a debtor, a cause of action accrues and the statute of limitations begins to run." *Armstrong v. Hedlund Corp.*, 316 Ill.App.3d 1097, 738 N.E.2d 163 (1st Dist 2000).

7. Missing Exhibits. Both Supreme Court Rule 282 and 735 ILCS 5/2-606 require that operative documents be attached to the complaint.

8. Plaintiff failed to attach any document such as an assignment showing that it is entitled to collect this debt that it alleges was originally owed to someone else. This fundamental fact is certainly "relevant information" within the requirements of Rule 282(a), and must be included for even a small claims complaint to state a claim.

9. Similarly, to the extent that this case is based upon a written contract, none has been attached to the complaint, either.

10. Missing Addresses. Finally, Portfolio Recovery has similarly ignored its obligation to include in the complaint the addresses of plaintiff and defendant.

735 ILCS 5/2-619 Motion

11. Furthermore, under the UCC, an assignee of a debt may only proceed pursuant to 735 ILCS 5/2-403. Section 2-403 codified the longstanding requirement that an assignee of a nonnegotiable note may not recover in its own name unless it alleges under oath (a) that the assignee is the actual bona fide owner of the account, (b) how the assignee acquired title, and (c) when he acquired title. *Illinois Midland R. Co. v. Farmers State Bank of Newark*, 200 Ill.App. 591 (1917); *Roy v. Moll*, 336 Ill.App. 360, 84 N.E.2d 163 (1949). The "affidavit of indebtedness" attached to the complaint does not properly swear to any of these items.

12. Finally, plaintiff expressly reserves the right to raise all defenses in this case, including the defense that this case was filed outside the statute of limitations.

WHEREFORE, defendant respectfully requests that this Court permit plaintiff leave to file this motion to dismiss, and that dismiss the case for failure to state a claim upon which relief may be granted.



Alexander H. Burke

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45082

Exhibit 1

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DEPARTMENT, FIRST DISTRICT, COOK COUNTY

PORTFOLIO RECOVERY ASSOCIATES LLC
Plaintiff

vs.

ALEJANDRO RODRIGUEZ
AKA ALEJANDRO FERGUSON

Defendant(s)

No:

Amount Claimed: \$2315.10 + costs

Return Date: 08-11-08

COMPLAINT

The Plaintiff, PORTFOLIO RECOVERY ASSOCIATES LLC, claims as follows:

1. Plaintiff, PORTFOLIO RECOVERY ASSOCIATES LLC, is a limited liability company and the Defendant(s), ALEJANDRO RODRIGUEZ, AKA ALEJANDRO FERGUSON is a resident of COOK County, Illinois.
2. The Defendant(s), ALEJANDRO RODRIGUEZ, AKA ALEJANDRO FERGUSON opened a(n) VISA CARD account with PROVIDIAN NATIONAL BANK, account number 4381451000420141.
3. The Defendant(s), ALEJANDRO RODRIGUEZ, AKA ALEJANDRO FERGUSON did make purchases and charges to the account, but the Defendant failed to make the monthly payments called for on the account. There is a balance due and owing \$2315.10. See client's affidavit attached here to as Plaintiff's Exhibit No. 1.
4. Plaintiff, PORTFOLIO RECOVERY ASSOCIATES LLC, is the successor in interest of said account from PROVIDIAN NATIONAL BANK having purchased said account in the regular course of business in good faith and for value.
5. The Defendant(s), ALEJANDRO RODRIGUEZ, AKA ALEJANDRO FERGUSON is in default on the account and Plaintiff, PORTFOLIO RECOVERY ASSOCIATES LLC, demands payment of this balance.

WHEREFORE, the Plaintiff, PORTFOLIO RECOVERY ASSOCIATES LLC, prays for judgment against the Defendant(s), ALEJANDRO RODRIGUEZ, AKA ALEJANDRO FERGUSON in the amount of \$2315.10 plus costs.

ATTORNEY FOR PLAINTIFF

Blatt, Hosenmiller, Leisner & Moore, LLC
Attorney for Plaintiff
125 S. Wacker Dr., Suite 400
Chicago, Illinois 60606-4440
(866)260-9838
Fax: 20455894 PLTCOMPI

THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

STATE OF VA
CITY OF NORFOLK

AFFIDAVIT OF INDEBTEDNESS

The undersigned, being duly sworn, deposes and states that he/she is an employee/agent of
PORTFOLIO RECOVERY ASSOCIATES LLC
and has knowledge of the account balance, and is duly authorized to make this affidavit.

Affiant states that the amounts shown below are taken/calculated from the original books
and records of the above named plaintiff, and based on information and belief, affiant states
that the amount due to
PORTFOLIO RECOVERY ASSOCIATES LLC AS SUCCESSOR IN INTEREST OF PROVIDIAN NATIONAL BANK
by ALEJANDRO RODRIGUEZ
on account(s): 4361451000480141

for purchases by or services rendered to the above named defendant(s) or member(s) of his/her
family is as follows:

Balance Due: \$2815.10

Affiant states that the amount shown above is true and correct and that there are no setoffs or
counterclaims available to defendant(s). Further affiant sayseth not.

Tamara Brown
Affiant

LEGAL SPECIALIST

This

Subscribed and Sworn to before me

15 day of December, 2007

Notary [Signature]

My Commission Expires: _____



Ex #1

Reference #: 2045584
Forwarder ID #: VAS
Account #: 4361451000480141

BAFFPORT/05/021JED
PORTFOLIO RECOVERY ASSOC. LLC



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MUNICIPAL DEPARTMENT, FIRST DISTRICT, COOK COUNTY

Portfolio Recovery Associates, LLC,
Plaintiff,

vs.

Alejandro Rodriguez,
a/k/a Alejandro Ferguson,

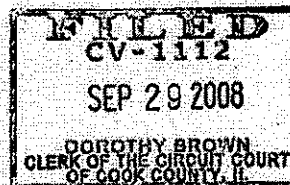
Defendant(s).

08 M1 109617

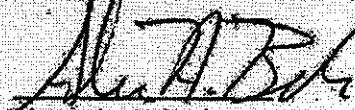
NOTICE OF FILING

To:

Blatt, Hasenmiller, Lebsker & Moore, LLC
125 S. Wacker Drive, Suite 400
Chicago, Illinois 60606-4440
Tel: (312) 704-9440
Fax: (312) 704-9430



You are hereby notified that on September 29, 2008, we filed the attached Appearance with the Clerk of the Circuit Court of Cook County, Municipal Department, Richard J. Daley Center, 50 West Washington, Chicago, Illinois 60602.


Alexander H. Burke

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(312) 729-5288
(312) 729-5289 (fax)

CERTIFICATE OF SERVICE

I, Alexander H. Burke, hereby certify that this Notice of Filing and Appearance were served upon counsel of record listed above on September 29, 2008 by United States Mail.


Alexander H. Burke